IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 994 of 2003
To
FIRST APPEAL No. 997 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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JADAV MANGABHAI TEJABHAI - Appellant(s)
Versus
SP.LAND ACQUISITION OFFICER & 1 - Defendant(s)

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Appearance :
FIRST APPEAL NOS. 994 and 995 of 2003

MR KM SHETH for Appellant(s) : 1,
MS KRINA P CALLA, AGP for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

FIRST APPEAL NO. 996 of 2003

MR KM SHETH for Appellant(s) : 1,
MS TANUJA KACHCHHI, AGP for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

FIRST APPEAL NOS. 997 of 2003

MR KM SHETH for Appellant(s) : 1,
MS K D PANDYA, AGP for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of Code of Civil Procedure, 1908, the appellants who are original claimants have challenged the legality of the common judgment and award dated October 04, 2000 rendered by the learned Extra Assistant Judge, Mehsana in Land Acquisition Reference Nos. 614/97 to 617/97, by which they have been awarded additional compensation at the rate of Rs. 12.50 paise per Sq.Mtr. for their acquired lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.50 paise per Sq.Mtr. by his award dated May 20, 1991 and claimed that they should have been awarded additional compensation at the rate of Rs. 25/- per

Sq.Mtr. for his acquired lands. Thus, the appellants – claimants have claimed in these appeals that they should be awarded additional compensation at the rate of Rs.10/- per Sq.Mtr. over and above total compensation awarded to them at the rate of Rs.15/- per Sq.Mtr.

2. A proposal was received by the State Government to acquire the lands of village – Dudhai, Taluka – Kadi, District – Mehesana for the public purpose of drilling project of O.N.G.C., Ahmedabad. On perusal of the said proposal, the State Government was satisfied that the lands of village – Dudhai, were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Act was issued which was published in the Official Gazette on July 06, 1989. The land owners were thereafter served with notices under Section 4 of the Act. On receipt of notices, they opposed the proposed acquisition. After considering their objections, a report was forwarded by the Special Land Acquisition Officer to the State Government as contemplated by Section 5A(2) of the Act. On scrutiny of the said

report, the State Government was satisfied that the lands of village-Dudhai which was specified in the Notification published under Section 4 of the Act were needed for public purpose of drilling project of O.N.G.C., Ahmedabad. Therefore, a declaration under Section 6 of the Act was issued, which was published in the Official Gazette on April 05, 1990. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 25/- per Sq.Mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated May 20, 1991 offered compensation to the claimants at the rate of Rs. 2.50 paise per Sq.Mtr. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act, requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly,

references were made to the District Court, Mehsana, where they were registered as Land Acquisition Reference Nos. 614/97 to 617/97.

3. On behalf of the claimants witness – Kanubhai Kushalbhai Patel, was examined at Exhibit – 9. The said witness mentioned that each claimant was raising three crops in a year and was earning Rs.30,000/- per Vigha per year by sale of agricultural produces. The witness produced previous award of the Reference Court relating to the lands of this very village at Exhibit-16 in support of the claim of the claimants for enhanced compensation. In his cross - examination, the witness admitted that he was not maintaining accounts and was not able to substantiate his claim that each claimant was earning Rs.30,000/- per year per Vigha by way of sale of agricultural produces. The suggestion made to him that the bills issued by the agricultural yard indicating sale of agricultural produces by the claimants were not produced because the production of crops was less, was denied by him. However, it was admitted by him that there were no facilities for

supply of water to the lands which were acquired in the instant case. It was admitted by him that they were getting water for irrigation on rent basis. The suggestion made on behalf of the acquiring bodies that the market value of his land was Rs. 4/- to Rs.5/- per Sq.Mtr., was denied by him. On behalf of the acquiring bodies no witness was examined.

4. On appreciation of evidence adduced by the claimants, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court noticed that though initially the claimants had claimed in all compensation at the rate of Rs.15/- per Sq.Mtr. but the claimants were permitted to claim compensation at the rate of Rs.25/- per sq.mt. when the application for amendment of the claim was allowed after leading of evidence was over. The Reference Court therefore, held that no additional evidence was adduced by the claimants to

establish that they were entitled to compensation at the rate of Rs.25/- per Sq.Mtr. In ultimate analysis, the Reference Court has awarded additional compensation at the rate of Rs. 12.50 paise per Sq.Mtr. by the impugned award, giving rise to above numbered appeals.

5. This Court has heard Mr. Kamlesh M.Sheth, learned Counsel for the appellants as well as Ms.Krina P.Calla, learned Assistant Government Pleader for the respondents-State and Mr. Ajay R. Mehta, learned Counsel for the acquiring body i.e. O.N.G.C. at length and in great detail. This Court has also considered the paper-book which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

6. After noticing the contents of the application at Exhibit–17 and the order dated August 08, 2002 passed by the learned Extra Assistant Judge, Mehsana, below it, Mr. Kamlesh Sheth, learned Counsel for the appellants on instructions of the appellants, does not press the claim made by the appellants in

the appeal that they are entitled to additional compensation at the rate of Rs.10/- per Sq.Mtr. In view of the statement made at the Bar by the learned Counsel for the appellants, the claim advanced by the appellants in these appeals that they are entitled to further additional compensation at the rate of Rs.10/- per Sq.Mtr. is liable to be rejected as not pressed.

7. However, the claim made by the learned Counsel for the appellants that the claimants would be entitled to interest on solitium, and therefore, the appeals should be accepted in part deserves consideration. From the impugned award it is evident that the Reference Court has held that the claimants would not be entitled to get interest on the amount awarded under Sections 23(2) and 23(1-A) of the Act, nor would they be entitled to get 12 percent of price difference on the amount awarded under Sections 23(2) and 23(1-A) of the Act. The Five Judge Constitution Bench of the Supreme Court in ***Sunder v/s. Union of India - 2001 (3) GLH 446***, has held that once it is held, as it inevitably must be, that the solatium

provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. What is ruled therein is that indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto, and therefore, the interest awardable under Section 28 would include within its ambit both the market value and the statutory solatium. What is emphasized by the Supreme Court is that the provisions of Section 28 in terms warrants and authorizes the grant of interest on solatium as well.

8. In view of the authoritative pronouncement of law by the Supreme Court, this Court is of the opinion that the claimants would be entitled to interest on the amount which is awarded to them under Section 23 (2) and 23(1-A) of the Act and to that extent, the appeals will have to be allowed.

9. For the foregoing reasons, the Appeals partly succeed. The claim made by the claimants that they are entitled to additional amount of compensation at the rate of Rs.10/- per Sq.Mtr., over and above additional amount of compensation awarded to them by the Reference Court is hereby rejected, as not pressed. It is held that the claimants are entitled to the interest on the amount which is awarded to them under Section 23(2) and 23(1-A) of the Act. The Appeals are allowed to the extent indicated above. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

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